Court No. 2

In the High Court of Uttaranchal at Nainital.

Appeal From Order No. 157 of 2001.

National Insurance Company Ltd.
Haldwani, District-Nainital,
Through Sri R.Mathur, Senior Divisional
Manager, Divisional Office, Haldwani,
District Nainital.

.....Opp.party/Appellant.

Versus

(1)Smt.Mohini Devi W/o Sri Ganga Singh
(2) Sri Ganga Singh S/o Sri Giopal Singh,
Both Residents of Village-Kaladhungi Basti,
Tehsil & P.S.-Kaladhungi, district-Nainital.

.....Claimants-Respondents

(3) Sri Ranjit Singh S/o Sri Surendra Singh
R/o Village Naripura Chakalua
Tehsil-Kaladhungi, District Nainital.

.....Claimants-Respondents

Sri Prabhat Pande, learned counsel for the appellant.
Sri Anil Kumar Joshi, learned counsel for respondent Nos. 1 & 2

.....

Dated: 20th Aug.,2004

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma, J.

This appeal has been preferred against the judgment and order dated 03.02.2001 passed by Motor Accident Claims Tribunal/ III Addl. District Judge, Nainital in Motor Accident Claim Case NO. 398 of 1998.

Brief facts giving rise to this appeal are that on 04.08.1998 deceased Jagat Singh was coming back to his village from village-Haripura Harsaan from Bus No. UP 21-8728. At about 9-9.30 hours he got the bus stopped for

stepping down. When he was in the process to step down, the driver of the bus started the bus rashly and negligently crushing the deceased due to which he died on the spot. The deceased was earning Rs. 2000/- per month by doing the work of white washing. He was 22 years of age at the time of accident. The claimants had filed the claim petition for compensation of Rs. 5,00,000/- due to the death of deceased Jagat Singh.

The Opp.parties contested the claim petition. The learned Tribunal, on the pleadings of the parties framed the following issues:-

(1) *Whether on 04.8.1998 at about 9-9.30 a.m. near Corbett crossing within the circle of P.S. Kaladhungi, District Nainital, deceased Jagat Singh was crushed at the time of stepping down from Bus No. UP 21-8728 which was being driven rashly and negligently by its driver due to which he died on the spot?*

(2) *Whether the accident occurred due to jumping of deceased from the bus due to his own negligence?*

(3) *Whether the petition is bad for non-joinder of necessary party of the driver of the bus?*

(4) *To what amount of compensation the petitioners are entitled to get and from which of the opposite party?*

The learned Tribunal decided all the issues in favour of the claimants and decreed the claim petition for compensation amounting to Rs. 2,16,000/- with interest at the rate of 9% per annum from the date of petition till the date of payment against the Opp.party No.2-National Insurance Company.

The appellant- National Insurance Company challenged the impugned award firstly on the ground that the accident occurred due to own negligence of deceased himself and secondly that the amount of compensation is

excessive. We have perused the impugned judgment. The Tribunal has given its finding while deciding issue No.2 that the insurance Company has filed to prove the accident occurred due to negligence of deceased himself and also held that the accident was occurred due to negligence driving of the driver of offending Bus. There is no dispute regarding the insurance of vehicle in question. We find that there is no illegality or infirmity in the order of learned Tribunal. The Tribunal has rightly calculated the amount of compensation keeping in view the dependency of the deceased. The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged as envisaged in sub-section (2) of Section 149 of the Motor Vehicles Act. We are fortified in our view by the Apex Court judgment in case of ***National Insurance Company Ltd. versus Nicolletta Rohtagi and others*** reported in ***2003 (3) T.A.C. 293 (Supreme Court)*** in which the Hon'ble Apex Court has held that, ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligent or contributory negligence of the offending vehicle".***

Thus, in view of the aforesaid law laid down by the Apex Court, the appeal filed by the appellant National Insurance Company has no force and is liable to be dismissed.

The appeal is dismissed accordingly. No order as to costs.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh